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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/589,974
Filing Date: June 08, 2000
Appellant(s): LEE ET AL.

MAILED
OCT 11 2007
GROUP 2600

George H. Gates
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 15 August 2007 appealing from the Office action mailed 16 March 2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,137,791	FRID et al.	10-2000
WO 98/43456	OLKKONEN	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6, and 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Frid et al. (USPN 6,137,791), of record.
3. Regarding claim 1, Frid discloses an internet protocol-based cellular telephone communications system, comprising: a router (col. 4, lines 16-27, where the VMSC (ref. 40) is, as broadly defined, “a router” since it performs “routing and processing [of] communicated data”); a foreign agent (FA), coupled to the router (Fig. 3 and col. 7, lines 52-55, where the VMSC, i.e. a “router,” establishes an IP communication link with foreign agent (ref. 310)); a base transceiver station (BTS), coupled to the router, for communicating with a mobile telephone within a transmission area associated with the base transceiver station (Fig. 3 and col. 4, lines 15-18, where the base station, BS (ref. 30), is coupled to the VMSC, i.e. the “router,” and where a mobile telephone within a transmission area of the BS communicates with the BS, see also col. 4, lines 29-36), wherein the router communicates with the BTS using a cellular network interface (col. 7, lines 34-40, where “the only mobile telecommunications nodes utilized for effectuating the communication of packet data with a mobile station are the VMSC 40 and base station 30,” such that the VMSC and BS are part of the cellular communication network and so communicate with each over “using a cellular network interface,” see also col. 4, lines 15-21, where normal

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voice data is communicated through the BS and VMSC); and a home agent (HA), coupled to the router (Fig. 3 and col. 7, lines 15-32, where the home agent (ref. 320) is indirectly coupled to the VMSC, i.e. the "router," through the foreign agent (ref. 310)), wherein the home agent communicates with the router and the foreign agent for registering mobile telephones (col. 7, lines 9-21, where the VMSC, the foreign agent, and the home agent communicate with each other to register the mobile station with the home agent) and transmitting messages using an internet-protocol network separate from the cellular network (col. 7, lines 52-55, where the VMSC, i.e. the "router," and the foreign agent communicate with each other over IP communication link 420, and col. 7, lines 58-62, where the home agent and the foreign agent communicate with each other over IP tunnel 440, such that all communication between VMSC, HA, and FA occurs over IP, i.e. "an internet-protocol network separate from the cellular network," see also col. 7, lines 22-33, where the "HA 320 then reroutes the received packet data to the connected FA/SR 310 by similarly encapsulating the received IP packet within another IP packet addressed to the FA/SR," such that communication between HA and FA occurs over IP); wherein messages are transmitted using the internet protocol network between the home agent and the router (col. 7, lines 52-55, where the VMSC, i.e. the "router," and the foreign agent communicate with each other over IP communication link 420, and col. 7, lines 58-62, where the home agent and the foreign agent communicate with each other over IP tunnel 440, such that all communication between VMSC, HA, and FA occurs over IP), and messages are transmitted using the cellular network interface between the router and the base transceiver station (col. 7, lines 34-40, where "the only mobile telecommunications nodes utilized for effectuating the communication of packet data with a mobile station are the VMSC 40 and base station 30," such

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that the VMSC and BS are part of the cellular communication network and so communicate with each over "using a cellular network interface").

4. Regarding claim 2, Frid discloses a second BTS, wherein a handoff between the BTS and the second BTS is performed through the internet protocol network (col. 7, line 46-col. 8, line 12, where all of the handover procedures occurring between the VMSC, the HA, and the FA occur over the internet protocol network).

5. Regarding claim 5, Frid discloses that the HA directs a message to the mobile telephone using an internet protocol address (col. 7, lines 22-33, where the "[i]ncoming packet data [is] addressed to the IP address associated with the mobile station" and the HA "reroutes the received packet data to the connected FA/SR 310 by similarly encapsulating the received IP packet within another IP packet addressed to the FA/SR 310," such that the HA directs a message to the mobile telephone using an internet protocol address).

6. Regarding claim 6, Frid discloses an internet protocol-based cellular telephone communications system, comprising: a handoff server (HS) (col. 7, lines 51-60, where the VMSC (ref. 40) is, as broadly defined, a "handoff server" since it is involved in the handoff process); a base transceiver station (BTS), coupled to the handoff server, for communicating with a mobile telephone within a transmission area associated with the base transceiver station (Fig. 3 and col. 4, lines 15-18, where the base station, BS (ref. 30), is coupled to the VMSC, i.e. the "handoff server," and where a mobile telephone within a transmission area of the BS communicates with the BS, see also col. 4, lines 29-36), wherein the handoff server communicates with the base transceiver station using a cellular network interface (col. 7, lines 34-40, where "the only mobile telecommunications nodes utilized for effectuating the

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communication of packet data with a mobile station are the VMSC 40 and base station 30," such that the VMSC and BS are part of the cellular communication network and so communicate with each other over "using a cellular network interface," see also col. 4, lines 15-21, where normal voice data is communicated through the BS and VMSC); and a home agent (HA), coupled to the handoff server (Fig. 3 and col. 7, lines 15-32, where the home agent (ref. 320) is indirectly coupled to the VMSC, i.e. the "handoff server," through the foreign agent (ref. 310)), wherein the home agent communicates with the handoff server for transmitting messages using an internet-protocol network separate from the cellular network (col. 7, lines 52-55, where the VMSC, i.e. the "handoff server," and the foreign agent communicate with each other over IP communication link 420, and col. 7, lines 58-62, where the home agent and the foreign agent communicate with each other over IP tunnel 440, such that all communication between VMSC, HA, and FA occurs over IP, i.e. "an internet-protocol network separate from the cellular network," see also col. 7, lines 22-33, where the "HA 320 then reroutes the received packet data to the connected FA/SR 310 by similarly encapsulating the received IP packet within another IP packet addressed to the FA/SR," such that communication between HA and FA occurs over IP); wherein messages are transmitted using the internet protocol network between the home agent and the handoff server (col. 7, lines 52-55, where the VMSC, i.e. the "handoff server," and the foreign agent communicate with each other over IP communication link 420, and col. 7, lines 58-62, where the home agent and the foreign agent communicate with each other over IP tunnel 440, such that all communication between VMSC, HA, and FA occurs over IP), and messages are transmitted using the cellular network interface between the handoff server and the base transceiver station (col. 7, lines 34-40, where "the only mobile telecommunications nodes

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utilized for effectuating the communication of packet data with a mobile station are the VMSC 40 and base station 30," such that the VMSC and BS are part of the cellular communication network and so communicate with each over "using a cellular network interface").

7. Regarding claim 9, Frid discloses that a handoff of a mobile telephone between the BTS and a second BTS within the cellular telephone communications system is handled through the handoff server (col. 7, line 46-col. 8, line 12, where the VMSC, i.e. the "handoff server," is responsible for establishing the new links after a handoff has occurred).

8. Regarding claim 10, Frid discloses that the mobile telephone communicates directly through the handoff server during the handoff between the BTS and the second BTS (col. 7, line 46-col. 8, line 12, where all communications between FA and BTS during a handoff are routed through the VMSC, until the handover is complete and the new VMSC takes over).

9. Regarding claim 11, Frid discloses that a handoff between the BTS and a second BTS is anchored through the first BTS until updates can be made at the HA (col. 7, line 46-col. 8, line 12, where the handover is completed when the new FA/SR, i.e. FA/SR2, contacts the HA to establish a new IP tunnel, such that, until the HA is contacted, all communications to the mobile are anchored through the first BTS).

10. Regarding claim 12, Frid discloses a method for communicating over an internet protocol-based communications network, comprising: sending a message from a home agent (HA) to a router over an internet protocol based network (col. 7, lines 52-55, where the VMSC, i.e. the "router," and the foreign agent communicate with each other over IP communication link 420, and col. 7, lines 58-62, where the home agent and the foreign agent communicate with each other over IP tunnel 440, such that all communication between VMSC, HA, and FA occurs over

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IP, i.e. "an internet-protocol network separate from the cellular network," see also col. 7, lines 22-33, where the "HA 320 then reroutes the received packet data to the connected FA/SR 310 by similarly encapsulating the received IP packet within another IP packet addressed to the FA/SR," such that communication between HA and FA occurs over IP), forwarding the message from the router to a base transceiver station (BTS) using a cellular network interface, wherein the cellular network is not part of the internet protocol based network (col. 7, lines 34-40, where "the only mobile telecommunications nodes utilized for effectuating the communication of packet data with a mobile station are the VMSC 40 and base station 30," such that the VMSC, i.e. the "router," and BS, i.e. the "BTS," are part of the cellular communication network and so communicate with each over "using a cellular network interface," see also col. 4, lines 15-21, where normal voice data is communicated through the BS and VMSC); and forwarding the message from the base transceiver station to a mobile telephone that is within a geographical communications zone of the base transceiver station (Fig. 3 and col. 4, lines 15-18, where the base station, BS (ref. 30) communicates with mobile telephones that are within a transmission area of the BS, see also col. 4, lines 29-36).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 3, 4, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al. (USPN 6,137,791), of record, as applied to claims 1 and 6 above, and further in view of Olkkonen (WO 98/43456), of record.

13. Regarding claims 3 and 7, Frid does not expressly disclose that a soft hand off (SHO) is performed between the BTS and the second BTS. Examiner takes official notice that soft hand offs are very old and well known in the art since soft hand offs reduce the probability that a connection will be dropped during hand off. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the hand off be a soft hand off in order to decrease the probability that a connection will be dropped during hand off.

Frid does not expressly disclose using asynchronous transfer mode (ATM) communications between the router and the BTS and the router and the second BTS; however, Frid does suggest that the VMSC, i.e. the "router," will communicate between different BTSs during a handover (Fig. 3, where a single VMSC is connected to two separate base stations, such that any handover between these two base stations will require the VMSC to communicate with both base stations). Olkkonen teaches, in a mobile communication system, using ATM to communicate within mobile network transmission systems in order to increase capacity and flexibility (page 8, line 33-page 9, line 2, see also page 11, line 11-page 12, line 33). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use asynchronous transfer mode (ATM) communications between the router and the BTS and the router and the second BTS in order to increase capacity and flexibility in the system.

Regarding claims 4 and 8, Frid in view of Olkkonen suggests that the SHO is performed using ATM between the BTS and the second BTS and the mobile telephone (Olkkonen: page 11, line 11-page 12, line 33).

(10) Response to Argument

Appellants' attorney asserts "that Appellants' claimed invention is patentable over the cited references" because "the references, taken individually or in combination, do not teach or suggest the specific combination of elements recited in Appellants' claims." Appeal Brief, p. 4. Specifically, with respect to claims 1 and 12, Appellants' attorney asserts that the VMSC of Frid is not a router. Appeal Brief, p. 9. Examiner, respectfully, disagrees with this assertion.

"During examination, the claims must be interpreted as broadly as their terms reasonably allow." MPEP § 2111.01(I) (citing to *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004)). "This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification." MPEP § 2111.01(I) (citing to *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004)). Here, Examiner submits that Frid's "VMSC" reads on Appellants' "router" when the term "router" is given its plain meaning.

The Microsoft Computer Dictionary defines "router" as "[a]n intermediary device on a communications network that expedites message delivery." Frid discloses that a "particular BS 30 . . . connects to an associated visited mobile switching center (VMSC) 40 for *routing* and processing communicated data." Frid, Figs. 1 and 3 and col. 4, lines 16-19 (emphasis added). The VMSC performs this routing by communicating voice data with the associated backbone

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network and communicating IP or packet data with the FA/SR. Frid, Figs. 1 and 3; col. 4, lines 19-25; and col. 7, lines 11-21 (where Frid discloses, or at the very least strongly suggests, that the VMSC of Fig. 3 operates in the same manner as the VMSC of Fig. 1, to which the quoted passage is directed, because Frid uses the same reference number for the VMSC in both Figs. 1 and 3, which discloses that the same device is referenced in both of these figures). As such, Frid's VMSC is an intermediary device on a communications network (the VMSC is situated between the BS and both of the FA/SR and the backbone network) that expedites message delivery (the VMSC sends specific types of messages to specific locations). Therefore, Examiner submits that the VMSC is a "router" in light of the plain meaning of this term.

In addition, Appellants' attorney asserts that "the VMSC . . . of Frid is not a router, as defined in Appellants' specification" because Appellants' specification discloses removing the MSC from the architecture and replacing it with a router. Appeal Brief, p. 9 (citing to Appellants' Specification, p. 11, lines 21-23). Examiner submits that "[t]hough understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim." MPEP § 2111.01(II) (quoting *Superguide Corp. v. DirectTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004)). Further, while "[a]n applicant is entitled to be his or her own lexicographer [to thereby] rebut the presumption that claim terms are to be given their ordinary and customary meaning", this should be done "by *clearly setting forth* a definition of the term that is different from its ordinary and customary meaning(s)." MPEP § 2111.01(IV) (citing to *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)) (emphasis added). In this case, Examiner submits that to define the claimed term "router" as "a routing

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device that is not an MSC,” as Appellants desire, would require Examiner to import limitations from the Specification to constrain the interpretation of the term “router”, where Appellants have failed to explicitly define the term in the Specification.

Examiner submits that substituting a router for an MSC in one embodiment in the Specification does not “clearly se[t] forth a definition of the term [router] that is different from its ordinary and customary meaning.” MPEP § 2111.01(IV) (citing to *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)). Simply, one of ordinary skill in the art would not be put on notice by the passage located at page 11, lines 21-23, of Appellants’ specification, that the term “router” is thereafter to be defined as “a routing device that is not an MSC.” Therefore Appellants have failed to rebut the presumption that claim terms are to be given their ordinary and customary meaning. *See*, MPEP § 2111.01(IV) (citing to *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)).

Since the claim terms are to be given their ordinary and customary meaning, giving the term “router” the definition ascribed by Appellants’ attorney in the Appeal Brief would require Examiner to impermissibly import limitations from the Specification to constrain the interpretation of the term “router”. As the MPEP points out ““a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”” MPEP § 2111.01(II) (quoting *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004)). In this case, while the Appellants disclose substituting a “router” for the MSC, the term “router” is broad enough to cover the VMSC of Frid, as outlined above. As such, Examiner submits that constraining the definition of the term “router” in light of a disclosed embodiment would require reading limitations into the

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claim when the claim language is broader than the disclosed embodiment. Examiner notes that if Appellants desire for the term “router” to be given a specific definition, Appellants are free to incorporate this definition in the claims through amendment.

Appellants’ attorney further asserts that the VMSC of Frid is not a router because “the routing function in Frid is performed by the FA/SR 310, not the VMSC 40.” Appeal Brief, p. 9. However, Appellant’s attorney fails to recognize that both the FA/SR and the VMSC can be a router. As outlined above, Frid’s VMSC performs “routing” such that it is a “router.” Whether or not the FA/SR of Frid performs routing is immaterial. As such, Examiner submits that both the FA/SR and the VMSC of Frid are routers.

In addition, Appellants’ attorney asserts that “there is no need for the VMSC 40 in Frid to include a routing function” because the VMSC 40 merely relays information to the FA/SR 40. Appeal Brief, p. 9. However, as outlined above, the VMSC of Frid not only sends information to the FA/SR, but it also sends information directly to the backbone network. Frid, Figs. 1 and 3 and col. 4, lines 19-25. This “routing” requires the need for the VMSC in Frid to include a routing function.

Furthermore, Appellants’ attorney asserts that “there is no indication that the VMSC 40 is coupled to or communicates directly with the HA 320 through the backbone network.” Appeal Brief, p. 9. First, Examiner notes that there is no requirement in the claims that the “router” be *directly coupled* with the HA. Rather, claim 1 merely recites: “a home agent (HA), coupled to the router”. The term “coupled” includes direct and indirect coupling such that the VMSC of Frid is coupled to the HA since these two devices are indirectly linked through the FA/SR. Frid, Fig. 3. Second, to the extent that Appellant’s attorney is asserting that Frid’s VMSC is not a

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router because it is not directly coupled to the HA, Examiner submits whether a device is a “router” does not turn on the types of the other devices to which the device is directly connected. Rather, whether a device is a “router” turn on the functions that the device performs. As outlined above, Examiner submits that Frid’s VMSC is a “router” because it performs the functions of a router, even if it is not directly coupled to the HA.

In view of the foregoing, Examiner maintains that Frid’s VMSC reads on the claimed term “router”, such that Frid anticipates claims 1 and 12.

With respect to claim 6, Appellants’ attorney claims that the VMSC of Frid is not a handoff server. Appeal Brief, p. 10. Examiner, respectfully, disagrees with the claim that Frid fails to disclose the claimed “handoff server”.

The Microsoft Computer Dictionary defines “server” as “a computer running administrative software that controls access to the network and its resources,” such that a “handoff server” would be “a computer running administrative software that controls access to the network and its resources” for a mobile during handoff. Frid discloses that during a handover the VMSC is responsible for establishing an IP communication link to effectuate packet communication for a mobile station. Frid, col. 7, lines 51-60. As such, Frid’s VMSC is a computer running administrative software that controls access to the network and its resources for a mobile during handoff since the VMSC controls access by a mobile in handoff to the IP network. Therefore, Examiner submits that the VMSC is a “handoff server” in light of the plain meaning of this term.

In addition, Appellants’ attorney asserts that “the VMSC of Frid is not a handoff server, as defined in Appellants’ specification” because “Appellants’ invention removes the VMSC

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from the architecture, and replaces the BSC (Base Station Controller) with a router that interfaces to the BTS (Base Station Transceiver)". Appeal Brief, p. 10 (citing to Appellants' Specification, p. 11, lines 21-23). In addition, Appellants' attorney asserts that "[i]n another embodiment, the hand-off server as [sic] a replacement for the router in Appellants' invention." Appeal Brief, p. 10 (citing to Appellants' Specification, p. 14, lines 17-18). For reasons similar to those outlined above, Examiner submits that substituting a router for a BSC does not "clearly se[t] forth a definition of the term [handoff server] that is different from its ordinary and customary meaning." MPEP § 2111.01(IV) (citing to *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)). Simply, one of ordinary skill in the art would not be put on notice by the passages located at page 11, lines 21-23, and page 14, lines 17-18, of Appellants' specification, that the term "handoff server" is thereafter to be defined as "a device that is not an MSC." Therefore Appellants have failed to rebut the presumption that claim terms are to be given their ordinary and customary meaning. See, MPEP § 2111.01(IV) (citing to *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)).

Since the claim terms are to be given their ordinary and customary meaning, giving the term "handoff server" the definition ascribed by Appellants' attorney in the Appeal Brief would require Examiner to impermissibly import limitations from the Specification to constrain the interpretation of the term "handoff server". As the MPEP points out "'a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.'" MPEP § 2111.01(II) (quoting *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004)). In this case, while the Appellants disclose substituting a "router" for the BSC, the term "handoff server" is

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broad enough to cover the VMSC of Frid, as outlined above. As such, Examiner submits that constraining the definition of the term "handoff server" in light of a disclosed embodiment would require reading limitations into the claim when the claim language is broader than the disclosed embodiment. Examiner notes that if Appellants desire for the term "handoff server" to be given a specific definition, Appellants are free to incorporate this definition in the claims through amendment.

Appellants' attorney then repeats the same arguments that Appellants' attorney made on page 10 of the Appeal Brief. Since these are the exact same arguments, Examiner submits that Examiner's interpretation of the term "handoff server" is proper for the reasons given above.

In view of the foregoing, Examiner maintains that Frid's VMSC reads on the claimed term "handoff server", such that Frid anticipates claim 6.

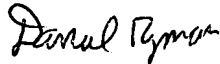
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

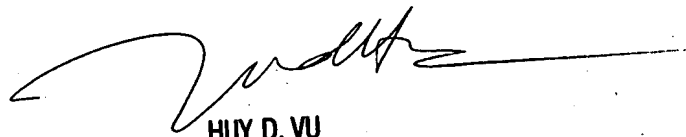
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